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FILED
SEP 14 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954

No. 289

PRUDENCE-BONDS CORPORATION
(New Corporation), *et al.*,
Petitioners,

against

CHEMICAL BANK & TRUST COMPANY, Trustee,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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Opinions Below

The majority and dissenting opinions in the Court of Appeals for the Second Circuit (R. 37a-43a) are reported at 213 F. 2d 443. The District Court rendered no opinion.

Jurisdiction

The judgment of the Court of Appeals was entered on June 3, 1954 (R. 44a-45a). The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1) and Sec. 24(c) of the Bankruptcy Act, 11 U. S. C. Sec. 47(c).

Question Presented by Petitioners

The question formulated by petitioners is not presented in the case at bar.

That question is:

> "Where a money judgment is increased by a United States Court of Appeals and the mandate is silent on the subject of interest on the amount of the increase pending appeal;
>
> "Is the successful appellant entitled to interest on the amount of the increase from the date of the district court's original judgment at the rate allowed by State law on money judgments, or should the Court of Appeals, to achieve justice, amend its mandate to award such interest?"

But the facts in the case at bar are different from those upon which that question is premised. The mandate here was not silent on the subject of interest on the amount of the increased award pending appeal. The Court of Appeals awarded interest at 3% on the principal amount of the increased award during the period of the appeal.

Petitioners' original appeal to obtain 6% interest was unsuccessful; the Court of Appeals held that interest at the rate of 3% was compensatory and no penalties should be imposed.* As the case was in equity, the rate of interest was in the discretion of the Court.

Consideration of that part of the question dealing with amendment of the mandate would require a review of the entire case on the original appeal, because there the Court ascertained the equities between the parties which determined the rate of interest applicable. This Court has denied a petition for certiorari to review that case. (Feb. 1, 1954, No. 516 Oct. Term 1953.)

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* The opinion of the Court of Appeals for the Second Circuit on the merits, dated August 20, 1953, is reported at 207 F. 2d 67 (certiorari denied 347 U. S. 904).

Statement

In reorganization proceedings in bankruptcy of Prudence-Bonds Corporation (hereinafter referred to as the "Debtor"), respondent Bank, as Successor Trustee of Prudence-Bonds, Fifteenth Series, filed its accounting in September 1938 and prayed for a judicial settlement and approval.

In 1945, objections were timely filed by the reorganized Debtor, Prudence-Bonds Corporation (New Corporation), the reorganization Trustees of the Debtor and certain individual bondholders, who are the petitioners here.

These objections were referred to a special master to take testimony and to report on the facts and the law with his recommendation and opinion thereon. Both petitioners and respondent filed objections to the report of the special master to the District Court.

Decision and Decree of District Court

The District Court dismissed the first of the three objections. On the second objection, which challenged the propriety of twelve releases of excess cash collateral by respondent to the Debtor, totalling $1,045,250, between October 31, 1930 and August 17, 1931, the District Court awarded $142,500, the principal amount of five of those twelve releases. On the third objection, the District Court awarded $16,716.66, the principal amount of certain collections of mortgage principal retained by the Debtor. The District Court also awarded interest at 3% on the amount of each transaction from the date thereof to the date of the entry of the decree. The decree (R. 12a-24a), entered December 19, 1952, awarded $159,216,66 principal, plus $102,350.14 interest; plus $1,193.37 costs, making a total of $262,760.17 (R. 23a-24a).

In *President and Directors of Manhattan Co.* v. *Kelby*, 147 F. 2d 465 (2 C. A. 1945), cert. den. 324 U. S. 866 (1945), an accounting proceeding by the Trustee of Prudence-Bonds, Fifth and Ninth Series, in the same bankruptcy reorganization proceedings, the Court of Appeals held (p. 479) that the rate of interest on each improper withdrawal should be at the discretion of the Court and not at the full legal rate.

Cross Appeals to the Court of Appeals

On cross appeals, petitioners contended, among other things, that the rate of interest on the amount of each transaction from the date thereof should be 6% rather than 3%. Respondent contended, among other things, that, in any event, the interest rate should not exceed the 3% awarded by the District Court.

Decision of Court of Appeals, August 20, 1953

The Court of Appeals modified the decree of the District Court. In sustaining the second objection in full, that Court surcharged the respondent $1,045,250 for all twelve cash releases "together with interest on each at 3% from the date when it was made". Petitioners' contention that the transactions for which respondent was surcharged should bear interest at the rate of 6% per annum was rejected.

The Court of Appeals said (207 F. 2d 67 at p. 77):

> "We are not inclined to upset the joint findings of good faith made below. . . . The events happened back in the halcyon days of high finance before the legal responsibilities of indenture trustees had been judicially defined. Looking now at these matters by wisdom of hindsight we should not attempt to enforce penalties based on a standard unrealistically high for the era. At any rate, we do not think the

conduct of the Bank [respondent here] such as to require the full measure of exaction or deprive the court of its discretion to allow interest at the lesser rate. . . ."

In the *"Summary and Direction"* of its opinion, that Court stated (pp. 81-82):

". . . We have ruled that the second objection must be sustained in full and the Bank [respondent here] surcharged for all twelve cash releases from October 31, 1930, through August 17, 1931, together with interest on each at 3 per cent from the date when it was made; and we have further ruled that the Bank must pay all the costs of this proceeding, including the compensation to the Master."

The judgment and the mandate of the Court of Appeals provide that the order appealed from is affirmed as to the appeal of the respondent Bank and reversed as to the petitioners' appeal, with costs, "for additional awards in accordance with the opinion of this court" (R. 25a).

Decree of District Court on Mandate

The decree of the District Court entered on October 23, 1953, on the mandate of the Court of Appeals, contained provisions for the following:

$1,061,966.66	principal;
688,674.56	interest at 3% from the date of each transaction to December 19, 1952;
1,193.37	costs awarded by District Court;
28,078.85	increased costs in the court below, awarded by the Court of Appeals;
$1,779,913.44	plus interest at 6% thereon from De-

cember 19, 1952 to the date of payment thereof, plus costs on appeal of $1,957.31 with interest at 6% from October 23, 1952, the date of the decree on mandate.

The decree of the District Court was contrary to the decision and mandate of the Court of Appeals in providing for interest during the period of ten months prior to the entry of the decree upon mandate, as follows: (1) interest at 6% on the $902,750 additional surcharge awarded by the Court of Appeals; (2) interest at 6% compounded on the interest calculated at 3%, on that $902,750 additional surcharge, from the date of each transaction to December 19, 1952; and (3) interest at 6% on the increased costs awarded by the Court of Appeals.

Decision of Court of Appeals, June 3, 1954

The Court of Appeals (Judges Chase, Swan and Frank) in a majority opinion written by Judge Swan, with which Judge Chase concurred, modified the decree of the District Court, because it did not conform with the mandate of the Court of Appeals, and said:

> ". . . As to the additional surcharges based on releases of cash, we stated that each should bear interest 'at 3% from the date when it was made.' We did not state when the interest period should end, but the implication is clear that it should continue until entry of the decree awarding recovery of the surcharges. We did not direct entry of judgment as of December 19, 1952. Until the decree on mandate was entered, the amount of the additional surcharge and interest thereon was unliquidated, and no duty to pay the 6% judgment rate of interest thereon arose. The same is true as to additional costs. Accordingly imposition of the 6% rate on items (2) and (3) from and after December 19, 1952 was not

in accordance with the mandate. As to those items that rate should begin on October 23, 1953.

"The appellees request that if the court should be of opinion that it was necessary for its mandate to provide specifically for interest on the increased awards at the judgment rate of 6% from the date of the original judgment, that the mandate be recalled and so amended. This request is denied. The delay in the entry of the proper judgment was necessary in the sense that time for appellate reviews was required. See *Briggs* v. *Pennsylvania R. Co.*, 2 Cir., 164 F. 2d 21, 23, affirmed 334 U. S. 304. . . ."

Judge Frank's dissenting opinion contained the following:

"I agree that, in the light of *Briggs* v. *Pennsylvania R. Co.*, 164 F. (2d) 21, 23 (C. A. 2), affirmed 334 U. S. 304, our mandate did not authorize the judge to enter judgment on the mandate as he did. . . ."

Summary of Argument

The petition presents no question "whose resolution will have immediate importance far beyond the particular facts and parties involved."*

This is an equity case where the Court, in its proper discretion, has determined that 3% interest is equitable compensation and that a 6% rate of interest would be a penalty that should not be imposed. Accordingly, the Court awarded petitioners 3% interest on the increased award of the Court of Appeals, during the period of the appeal and properly denied petitioners' motion to amend the mandate.

* Address of the late Chief Justice Vinson before American Bar Association, September 7, 1949.

Petitioners, however, seek compound interest. They want interest at 3% for about twenty years and also demand compound interest at 6% on that total interest balance, for about ten months prior to the grant of the increased award by the Court of Appeals. That result would be inequitable; it would impose penalites in addition to awarding compensation, which the Court concluded should not be allowed.

A consideration of that question would require a review of all the facts in the original appeal.

There is no conflict of decisions. The case at bar is distinguishable from those cases that petitioners say are in conflict.

No Special and Important Reason Warrants Review

Petitioners have received equitable interest compensation, but they seek the aid of this Court to obtain not only a higher interest rate, but, in addition, compound interest, although the Court below, sitting in equity, determined that such demand would require the imposition of unwarranted penalties.

The Court of Appeals did not deny interest to petitioners on the increased award during the period of the appeal, although the petition herein repeatedly states that the mandate was silent about interest pending the appeal.* Indeed, if the mandate had been silent on this subject, petitioners, on the authority of *Briggs* v. *Pennsylvania R. Co.*, 334 U. S. 304, would not have been entitled to any

* Petitioners state: ". . . The Court's mandate on the prior appeal was silent about interest pending appeal, . . ." Petition, p. 6). "Upon the mandate of the Court of Appeals, which was silent about interest pending appeal, . . ." (Petition, p. 5). Also, see Petition, p. 2, Question Presented.

interest during the period of the appeal. Petitioners have received interest at the equitable rate of 3% during the period of the appeal.

On each transaction involved in the $902,750 additional surcharge awarded by the Court of Appeals, petitioners have received interest at 3% from the date thereof to October 23, 1953 when judgment was entered on the mandate of the Court of Appeals. That award of interest totals $609,177.60. However, petitioners, in addition, seek about $30,000 compound interest. They wish to calculate interest at 3% to December 19, 1952, ten months prior to the entry of the decree on mandate, and then obtain compound interest thereon at 6% for that period.

No conflict in decisions

Petitioners have cited no case in direct conflict with the case at bar. None of the cases cited by petitioners awarded compound interest such as is demanded here. Indeed, one of them specifically refused compound interest.

Givens v. *Missouri-Kansas-Texas R. Co. of Texas*, 196 F. 2d 905 (C. A. 5), did not award compound interest. In an action at law, the Court of Appeals in the *Givens* case allowed interest at the legal rate on the amount of a jury verdict during the period of appeal.

In the equitable case at bar, the Court allowed interest at the equitable rate on the amount of surcharges during the period of appeal.

As the Court of Appeals in the case at bar had allowed interest at the equitable rate of 3%, which was determined on the merits of the case, the Court properly denied petitioners' motion to amend the mandate to obtain the legal rate of interest at 6% on the principal award and in addition compound interest at 6% on the interest

award. The Court had already determined that petitioners were not equitably entitled to any such penalties.

Thus the *Givens* case is not in conflict with the case at bar.

Petitioners state that the decision below is "probably in conflict" with the following cases (Petition, p. 9). On the contrary, they are all readily distinguishable.

Reynolds v. *Chicago, St. P., M. and O. R. Co.* (C. A. 8), 168 F. 2d 944, refused to grant plaintiff's demand for compound interest during the period of the appeal, which petitioners demand in the case at bar. In the *Reynolds* case the Court amended its mandate to allow interest "without any compounding" during the period of the appeal.

In *Wright* v. *Paramount-Richards Theatres* (C. A. 5), 198 F. 2d 303, 308, on the original appeal in an action at law, legal interest was allowed on a jury verdict during the period of appeal. In *Coyle Lines* v. *United States* (C. A. 5), 198 F. 2d 195, 196, on the original appeal in an admiralty case, interest at 4% was allowed on the amount of a collision damage award. *Cleveland Tankers* v. *Tierney* (C. A. 6), 169 F. 2d 622, is similar to the case of *Coyle Lines.*

Phillips Petroleum Co. v. *Oldland* (C. A. 10), 187 F. 2d 780, cert. den. 342 U. S. 816, held that interest was properly allowed by the District Court on a judgment, since the mandate of the Court of Appeals left that question to the discretion of the lower court.

In *First National Bank & Trust Co.* v. *Village of Skokie* (C. A. 7), 198 F. 2d 1017, the Court construed its own mandate as providing for interest during the period of the appeal. In the case at bar the Court of Appeals construed its mandate as providing for the equitable rate of interest during the period of appeal.

In *The Kia Ora* (C. A. 4), 252 Fed. 507, the Court in its mandate directed the District Court to award interest during the period of appeal, just as the Court of Appeals did in the case at bar.

Petitioners (Petition, p. 9) state that the court below held, in effect, that it would not "in any case", either in its mandate or by amendment of its mandate, provide for the judgment rate of interest on an increased award pending appeal. That statement is clearly erroneous. The court below, on the particular facts in this equity case, determined that petitioners were entitled to an equitable rate of interest as compensation and no more; and that, therefore, there was no reason to provide otherwise in its mandate or by amendment of its mandate.

Whether or not the mandate should be amended to award interest at 6% during the period of the appeal and to award the compound interest demanded by petitioners involves the merits of the accounting proceeding and would require a review of the entire case to determine the equities.

Thus the decision at bar is dependent upon its own peculiar facts and is of importance only to the parties in the case. There is no conflict in the decisions. No special and important reason warrants a review.

If the Court, however, should decide to grant the petition now presented, we believe the Court should vacate its order denying the respondent's petition for certiorari in *Chemical Bank & Trust Company, Trustee* v *Prudence-Bonds Corporation (New Corporation), et al.*, 347 U. S. 904, and should grant respondent's petition. The question presented in respondent's petition would necessarily be involved in a consideration of the question presented here. The question in respondent's petition involved the merits of the accounting proceeding. The question here involves a review of the merits to determine the equities between the parties.

Conclusion

1. The petition for a writ of certiorari should be denied.

2. In the event the petition should be granted, respondent requests the Court to vacate its order denying certiorari in *Chemical Bank & Trust Company, Trustee* v. *Prudence-Bonds Corporation (New Corporation), et al.*, 347 U. S. 904, and to grant respondent's said petition.

Respectfully submitted,

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September 10, 1954.